

JAMES S. GULEKE

IBLA 72-315; 72-333

Decided January 16, 1973

Appeal from four decisions of the Montana State Office, Bureau of Land Management, denying petitions for reinstatement of oil and gas leases Mont. 1742, 1746, 1747, 1748, 1749, 1750, 1751, 2017, 2138, 2139, 10495, and 10497, terminated by operation of law for failure to pay timely the annual rental required by the lease terms.

Affirmed.

Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Rentals

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates by operation of law if the rental is not paid on or before the anniversary date of the lease; timely tender of rental by means of a check which when presented, is dishonored by the bank on which it is drawn, does not constitute timely payment.

Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Rentals

A mere allegation that the bank has erroneously refused to honor a check drawn thereon, uncorroborated by an admission of mistake from the bank, will not suffice to make the failure to timely pay "justifiable" and reinstatement is properly denied in such a case.

Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Rentals

While the erroneous actions of a bank in denying payment of a check drawn thereon will suffice to make a timely payment a "tender" within the ambit of section 31 of the Mineral Leasing Act, proof, that an error did in fact occur, is required; and where no such proof is offered the payment cannot be considered a valid tender so as to fulfill the procedural requirements for reinstatement.

Oil and Gas Leases: Reinstatement—Oil and Gas Leases: Rentals

Where the owner of a lease terminated for failure to timely pay the advance annual rentals does not pay or tender the

rental within 20 days of the due date, the Department has no power to grant reinstatement, and the petition for the same is properly denied.

APPEARANCES: James S. Guleke, pro se.

OPINION BY MR. HENRIQUES

James S. Guleke appeals from four decisions of the Montana State Office denying his petitions for reinstatement of various oil and gas leases terminated by operation of law for failure to pay the annual rentals prior to or on the anniversary date.

The rental payment for oil and gas leases Mont. 1742, Mont. 1746, Mont. 1747, and Mont. 1749, among others not involved in this appeal, was due on June 1, 1970, in the amount of \$7,183.50. The rental payment for oil and gas leases Mont. 1748, Mont. 1750, Mont. 1751, and Mont. 2017 was due on July 1, 1970, in the amount of \$3,742.50. Appellant's checks for the same were received on the due dates. Upon presentment, however, the bank refused to honor the checks, alleging "Insufficient funds." The State Office returned the checks to the lessee informing him that his leases had terminated by operation of law. Receipt of these notices was acknowledged on June 15 and August 8, 1970, respectively. No further communication was received from appellant until April 9, 1971, at which time appellant telephoned the State Office concerning his leases. On April 20, 1971, appellant wrote the State Office and included two cashier's checks for the 1970 rentals. Also included in this communication was a "Draft" letter prepared for the signature of the president of The American National Bank of Amarillo, Texas, which declared in part: "Through a mechanical inadvertance the check was not honored." This letter was unsigned, numerous editing marks were apparent, and there was no indication as to the origins of its conception. No signed, final copy was ever presented, so it cannot be construed that the bank has admitted error in declining to honor the checks. Duncan Miller, 7 IBLA 343 (1972). Cf. Duncan Miller, 70 I.D. 113 (1963).

On December 28, 1971, appellant filed a formal petition for reinstatement. By decisions dated January 27, 1972, the State Office declined reinstatement, noting that no statement from the bank had been forthcoming admitting a mistake on its part, and further that the checks submitted with the appellant's petition for reinstatement had themselves been returned marked "Insufficient funds."

Section 31 of the Mineral Leasing Act, 30 U.S.C. § 188, as amended by the Act of May 12, 1970, 84 Stat. 206, requires that the petition for reinstatement include the required rental. Checks tendered in payment of rental owed, which are not honored by the drawee bank do

not fulfill this obligation. Cf. Duncan Miller, 7 IBLA 343 (1972); Duncan Miller, A-31095 (February 2, 1970). Thus, as the exercise of the Department's discretion to grant reinstatement is limited to those cases in which appellants file a petition for reinstatement "together with the required rental," this Board has no power to order reinstatement and the State Office correctly declined to grant it.

Appellant, as regards these eight leases, contends as an alternative ground of appeal that the lands embraced by the leases contain valuable deposits of gas and can be canceled only by judicial proceedings, citing 43 CFR 3108.3. The short answer to this contention is that termination under section 31 of the Mineral Leasing Act is not an administrative cancellation of the lease. There is no administrative discretion in such matters; the lease terminates by operation of law. As the Associate Solicitor for the Division of Public Lands noted in 1961, "The statute is self-operating, and if the rental is not paid on the anniversary date, the lease simply terminates." Leases Automatically Terminated By Operation of Law Under Section 31 of the Mineral Leasing Act, M-36631 (October 11, 1961).

A different answer would be dictated, however, if the lease contained a well capable of producing oil or gas in paying quantities. Under section 31 such a lease does not automatically terminate by operation of law. It was in light of this possibility that the State Office inquired of the Geological Survey to ascertain if there was any production of oil or gas on any of these leases. The District Engineer, Billings, Montana, replied that there were abandoned dry holes on leases Mont. 1749 and 1751, and that none of the other leases had been drilled during their terms. Thus, there was no well on either lease, Mont. 1749 or 1751, capable of producing oil or gas in paying quantities. Nor was there such a well on any of the other leases. The argument pressed on this point is rejected. ^{1/}

^{1/} Appellant argues as a third ground of appeal that since part of the lands embraced by the leases are within the known geologic structure of a producing field, the lands may be leased only by competitive bidding. While we agree with the general statement that KGS lands may only be leased competitively, see 30 U.S.C. § 226(b) (1970), and Superior Oil Company, A-28897 (September 12, 1962), we do not feel that this issue is properly germane to a petition for reinstatement, and accordingly we do not pass on the merits of the contention that some of the lands embraced by the leases are within the known geologic structure of a producing field. Appellant may, of course, protest the issuance of any lease for the subject lands, when and if such issuance occurs.

The advance rental for leases Mont. 10495 and Mont. 10497 was due on November 1, 1971. Payment was postmarked on the due date. It was received two days late. The checks by which payment was tendered were returned with the notation "Insufficient funds." Appellant alleges in the petition for reinstatement that "through an accounting oversight such checks were not honored." No corroborative evidence was introduced. Two checks were mailed to the State Office on November 24, 1971, and were received on November 29, 1971. The State Office held that the appellant's petition for reinstatement must be denied as the rental was not "paid on or tendered within 20 days" of the due date as required by section 31 of the Mineral Leasing Act. We agree. We note that the lease terminated by operation of law when payment was not received on November 1. The check received on November 3, was returned because of insufficient funds. Had the appellant proved that this was a bank error, payment would be considered to have been tendered within the 20-day period. No proof was offered on this point. Thus, that payment did not fulfill the requirement of the law limiting reinstatement to those cases in which the rental is paid or tendered within 20 days of the anniversary date. The second payment was not sent until November 24, more than 20 days after the due date. The statute clearly requires that the payment be mailed within 20 days after the due date. This was not done here and the State Office correctly held that it could not grant reinstatement.

Payment of the advance rentals on leases Mont. 2138 and Mont. 2139 were due prior to or on September 1, 1970. No payment was sent until October 29, 1970. The State Office held that no reinstatement was possible because appellant had not paid or tendered his rentals within 20 days of the due date. For the reasons discussed supra, we agree.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques, Member

We concur:

Edward W. Stuebing, Member

Anne Poindexter Lewis, Member

